

**ILLINOIS LABOR RELATIONS BOARD**  
**BEFORE ARBITRATOR ROBERT PERKOVICH**

In the Matter of an Interest

Arbitration between

City of Peoria	)	
and	)	#S-MA-13-144
Peoria Police Benevolent Association	)	

A hearing was held in Peoria, Illinois on November 19, 2014 before Arbitrator Robert Perkovich who was jointly chosen to serve as such by the parties, City of Peoria ("Employer") and Peoria Police Benevolent Association ("Union"). The Employer was represented by its counsel, Kenneth Snodgrass and David Wiest and testifying for the Employer were Partick Urich, James Scroggins, and Jerry Mitchell. The Union on the other hand presented its evidence in narrative fashion. Following the close of the hearing the parties filed timely post-hearing briefs that were received on February 12, 2015.

**ISSUES PRESENTED<sup>1</sup>**

The issues presented for resolution are as follows:

1. Annual Wage Increases
2. Reduction of Step Progression
3. Elimination of Longevity Payments for Newly Hired Bargaining Unit Employees
4. Duty Relief Days
5. Availability Pay

**EXTERNAL COMPARABLES**

The parties stipulated that the appropriate external comparable communities are as follows:

- a. Bloomington
- b. Champaign
- c. Decatur

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<sup>1</sup> The parties have advised that they have reached a tentative agreement regarding the issue of the Good Attendance Policy in Article 13 of their agreement, but have asked that I retain jurisdiction over that issue in the event that a dispute arises.

- d. Moline
- e. Normal
- f. Rock Island
- g. Springfield
- h. Urbana.

#### BACKGROUND

The bargaining unit herein consists of all full-time sworn police officers excluding the chief of police, deputy chief, assistant chief, captains and managerial and confidential employees. Between 2009 and 2014 the number of bargaining unit employees fell from a high of 248 to 205. The last collective bargaining agreement between the parties ended in 2012, but was extended by mutual agreement through 2013. The parties commenced their bargaining exchanging their initial non-economic proposals on October 9, 2013. Thereafter, on December 4, 2013 the parties exchanged their initial economic proposals. On December 13, 2014 the Union submitted its economic and non-economic package proposal to the Employer and the Employer submitted its counter proposals on those issues on December 21, 2014.

At the hearing and in its post-hearing brief the Employer set out an exhaustive case as to its financial situation. In brief, the record reflects that over the past five years its overall economic climate has improved, much leaves to be desired. For example, it has suffered declining property tax and sales tax revenues, and rising pension costs have compelled it to move millions of dollars in property tax levies and personal property replacement tax receipts from its general fund to its police pension fund.

More particularly, the Employer has decreased its expenditures 15.8% from 2013 in part by reducing its municipal work force by a little over 17%. In addition, it has cut capital spending in 2015 by a little over 26%. With regard to revenue, the Employer implemented new taxes on water usage and natural gas and has doubled the garbage fee for its residents. Nevertheless, the Employer's City Manager testified that the Employer has consciously refrained from increasing the property tax rate characterizing it as a "policy decision that the council has made<sup>2</sup>."

It is clear from the record that the Employer is not asserting that it is unable to afford the Union's demands and thus, it appears that rather it is asserting the that interest and welfare of the public require that its final offers be adopted.

One clearly cannot ignore that the public has a real and substantial interest in keeping the costs of its governmental bodies in check and its own liabilities for taxes in check as well. Nevertheless, I agree with Arbitrator Peter Meyers, the public also has a real and substantial interest in attracting and

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<sup>2</sup>In addition, he testified that the Employer "could pay 10 percent wage increases...but it would mean we would have to make significant expenditure cuts elsewhere or in the department."

retaining high quality, experienced, and capable employees, especially those working in safety sensitive jobs. (See e.g., *City of Danville*, #S-MA-07-220 (2010).

in light of this, it seems to me that the best approach is to follow the long-standing precedent that I and other arbitrators have applied in a case such as this. That is, when faced with the dilemma of a public employer that genuinely wishes to be prudent with its funds and with the demands of taxes on its residents, the arbitrator is not to interject him or herself into what are political questions of the overall allocation of resources and/or potential sources of revenue. Rather, he or she is to limit him or herself to the Section 14(h) statutory factors and thus when a public employer is able to meet the demands of a union, but would prefer not to or thinks that it would be imprudent to do so, the arbitrator is to do nothing more than evaluate the data with regard to the narrow issue of the propriety of each party's final offer. (See e.g., *County of Macoupin*, #S-MA-09-065, (Goldstein, 2012).

I am mindful of the solemn duty that has been placed on me in this regard knowing that it is possible that if I adopt any or all of the Union's final offers I may place the elected officials of the Employer and its residents in a less than enviable position. Nevertheless, if the Employer is financially able to pay for those final offers it is then in the hands of those officials and residents to make the political decision as to allocation of resources and/or potential sources of revenue<sup>3</sup>.

I am then left to decide whether the Employer is indeed able to pay for any or all of the Union's final offers and I find that it is in fact able to do so. I need not belabor the point with a recitation of the all of the facts and figures in support of this conclusion for it is, in my estimation, enough to rely on the Employer's candid admission, quoted above at footnote 2, that it could do so<sup>4</sup>.

## DISCUSSION

### a. The Relevant Statutory Factors

The Illinois Public Employee Relations Act sets forth the following factors to be used by interest arbitrators in resolving disputes of this type. They are as follows:

1. the lawful authority of the employer
2. the stipulations of the parties
3. the interests and welfare of the public and the financial ability of the Employer
4. a comparison of the wages, hours, and conditions of employment of employees

involved with those of other employees performing similar services and with other

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<sup>3</sup> Moreover, that burden is not borne solely by the elected officials and residents of the Employer. Rather, it is conceivable that should the Employer be required to pay for any or all of the Union's final offers members of the bargaining unit may also pay a price. However, that again is a decision that I am relieved of making under Section 14(h) of the Act.

<sup>4</sup> In light of this finding I need not address the various arguments of the parties regarding police pensions.

employees generally in public and private employment in comparable communities

5. the average cost of living
6. the overall compensation of employees involved
7. changes in any of the foregoing during the pendency of the arbitration
8. such other factors which are normally or traditionally taken into consideration in the resolution of such disputes.

As more fully described below, I have considered all of the above in rendering this award.'

b. The Issues

1. Are Wage Increases, Step Progression, and Longevity one issue or three issues?

On this matter the Employer argues that although these subjects are interrelated they should be considered for the purpose of this interest arbitration as three separate issues. On the other hand the Union disagrees.

Interestingly, each party cites an award from other arbitrators that takes the position they urge herein. The Employer cites to the decision of Arbitrator Harvey Nathan in *Village of Gurnee*, #S-MA-12-185 (2014) while the Union cites to the award of Arbitrator Marvin Hill in *City of East Moline*, #S-MA-08-250 (2009). Unfortunately, neither of my esteemed colleagues set forth their rationale for their differing approaches, but rather simply analyzed the final offers in the manner in which they did.

There are many many interest arbitration awards where arbitrators have, much more often than not, considered longevity separate and distinct from wage increases. But more importantly, to consider these three issues as one simply because they are all related to "wages" would invite the next enterprising advocate to argue, for example, that health care insurance, vacations, and uniform allowance are all one issue because they are all "benefits." Therefore, I find that it is best to consider these three issues as separate and distinct from one another.

2. Wage Increases

On this issue the final offer of the Union is to increase wages of bargaining unit employees by 2.5% in each of the three years of the parties' agreement. In contrast, the Employer proposes that wage increases of in each of the three years of the parties' agreement should be, respectively, 1%, 1.5%, and 2.0%.

In support of its final offer the Union relies on the internal and external comparables. On those benchmarks the record shows that for the last year of their agreements, the first year of the agreement at issue herein, the Employer's firefighters received a 2% wage increase while its IBEW employees and craft employees received 3% wage increases. More helpful however is the fact that for 2015 and 2016

the Employer will be granting to its firefighters wage increases of 2.5%. Thus, the internal comparables favor the Union's final offer because those wage increases are more similar to those proposed by the Union.

In terms of the external comparables, the record shows that for 2014 no external community is providing wage increases less than 2% with two of those communities providing wage increases in excess of that offered by the Union. Similarly, for 2015 of the three communities with bargaining agreements in place for that year two provide for a wage increase that matches that offered by the Union and the third is increasing wages at a higher percentage. Thus, external comparability favors the Union's final offer.

In reply the Employer contends, and the Union concedes, that the relevant cost of living favors the Employer's final offer in that it was for 2012, 2013, and 2014, respectively, 2%, 1.4%, and 1.4%<sup>5</sup>. However, the Employer's primary argument seems to be that because of the duration of the prior agreements between the parties the Union has managed to avoid negotiating with the Employer in the context of recessionary and post-recession economic conditions. Thus, it argues the Union has not been called upon, until now, to deal with these conditions. In reply however, the Union points out the parties' prior agreement ended in 2013 and that they agreed to extend the prior contract until the current negotiations.

I find that the Union's contention carries the day. The record does not disclose why the Employer agreed to a contract extension but the fact of the matter is that it was at that point in time that it could have addressed the economic conditions it relies upon so heavily now. In pointing this out I do not mean to imply that the Employer's reliance on those conditions is misplaced, I simply point out that it is tardy.

I therefore adopt the Union's final offer on the issue of wage increases.

### 3. Longevity

On this issue the Employer proposes to end longevity for those hired on or after January 1, 2015 while the Union maintains that the status quo should remain in place.

Initially the Union relies on again, internal and external comparability. With regard to the former, the record establishes that the Employer's firefighters and its employees represented by AFSCME enjoy longevity while its craft employees and those represented by the IBEW do not. As for external comparability, in eight of the nine external comparables employees enjoy longevity pay. Thus, external comparability favors the Union's final offer while internal comparability is unhelpful.

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<sup>5</sup> The Union attempts to counterbalance this fact by asserting that historically the parties have negotiated wage increases in excess of the relevant cost of living. That may very well be true, but the statutory factor of the cost of living does not read, for example, "the cost of living as modified by the parties' bargaining history." Thus, I find that argument not persuasive.

In addition, the Union relies on the award of Arbitrator Elliot Goldstein in *County of Macoupin, S-MA-09-065 2012*) that a two tier plan like that proposed by the Employer should be awarded in arbitration only under the most compelling circumstances for such a plan creates "haves" and "have nots."

In reply the Employer argues, although not explicitly, that there are such compelling circumstances because its police officers reach the highest pay level faster than the external comparables and because they are paid generally better than the officers in those communities.

Those arguments fail however for two reasons. First, as noted above, I have found that the issue of wage increases and longevity are separate and the Employer's arguments fail to make that distinction. Secondly however, and more importantly, while those officers working for the Employer who were hired before January 1, 2015 will indeed earn more and reach the highest pay level when compared to the external comparables, that will no longer be the case, under the Employer's final offer, for those hired after that date.

I therefore adopt the Union's final offer.

#### 4. Duty Relief Days

On this issue the Union offers that duty relief days be increased, effective January 1, 2015, from eight to twelve days each year while the Employer proposes that the status quo be maintained.

To support their respective offers both parties undertake an external comparability analysis and in doing so it is clear that only the Employer provides this benefit. Nevertheless, the Union argues that its final offer should be adopted because only the Employer, among the external comparables, pays overtime pay in dollars rather than compensatory time and thus, the Union asserts, bargaining unit employees receive the lowest cumulative paid leave time. In reply, the Employer contends that a proper external comparability analysis must compare and contrast the same economic issue or benefit. Thus, it asserts, if the Union wished to increase cumulative paid leave time it should have addressed that issue in bargaining. Moreover, the Employer points out, even with the status quo its officers receive 344 hours of paid leave time each year with the range among the external comparables being 264 to 355.

On this issue I find for the Employer because when looking to compare and contrast the external comparables on the issue of duty relief days, it is clear that that factor favors the Employer's final offer whether one looks to the benefit itself, the cumulative paid time off, or both.

I therefore adopt the Employer's final offer.

#### 5. Availability Pay

On this issue the Union offers that availability pay should be increased from \$30 per day to one hour of a police officer's overtime pay. The Employer on the other hand argues for the status quo.

Again, internal and external comparability carry the day. As for the former, the record reflects that six of the nine external comparables either receive no availability pay or such pay in an amount similar to that of the Union. As for internal comparability, the Employer's fire fighters and its employees represented by AFSCME receive a lesser such benefit and that its crafts employees also receive such a benefit. However, the exact amount of the benefit for the craft employees is not set forth in the collective bargaining agreement between the Employer and the unions representing those employees.

Thus, because there is no clear trend among the internal and external comparables favoring a change from the status quo, I adopt the Employer's final offer.

#### 6. Step Movement

On this issue the Employer's final offer is to revise the parties' step movement for salary increases such that employees will move one step each year. On the other hand the Union proposes that the status quo, that employees move two steps each year and therefore reach maximum pay in seven years, be maintained.

The threshold question on this issue is whether the Employer's final offer is a breakthrough. The Union contends that it is and because the Employer has failed to establish a proven need for the change and because the change will impose an undue hardship on bargaining unit employees. Conversely, the Employer contends that its final offer is not a breakthrough because only 170 of 219 employees will be affected by the change and because the change will allow the Employer to realize a savings on or about \$55,000 over the life of the parties' agreement.

On this discrete point I must find for the Union. First, the record reflects that the status quo has been in effect for a substantial time. Secondly, although the Employer is correct that currently only on or about 22% of employees will be affected, it cannot be ignored that prospective employees will be affected and will feel the effects of this change for a substantial period of time.

Applying the breakthrough analysis, the Employer nevertheless argues that its final offer should be adopted. In so doing it engages in a comparability analysis yielding the conclusion that is police officers enjoy maximum pay sooner than the internal and external comparables. This analysis however again ignores my finding that the issue of wages and step movement, though related, are separate issues. Alternatively, the Employer's main arguments are that the status quo has failed and that the Union has resisted the Employer's efforts to negotiate a change to that failed status quo.

As for the former consideration the Employer points to its ever increasing pension obligations and that the current step movement system has failed to meet its rationale i.e., recognizing productivity. Therefore, moving employees two steps each year has no "work-related justification." More particularly as to productivity, the Employer asserts that an employee's productivity is greater earlier in his or her career as they learn their skills and therefore providing for faster pay growth in early

years is justified. This argument fails however for at least two reasons. First, if the Employer is correct<sup>6</sup>, it's final offer does not treat the junior employees any differently than the more senior employees. Second, the Employer seems to concede that its assertion about relative productivity is questionable when later in its post-hearing brief it states the rationale for step movement "is to spread out productivity gains that an employee attains over his career." (Employer Post-Hearing Brief at 25)

The Employer however fares better when the parties' bargaining history is examined. In the current round of negotiations the Employer early on proposed changes to the parties pay scale, including changing step progression from two steps each year to one step. In the Union's counter-proposal however it made no reference to that issue. In reply the Employer revised its proposal regarding step progression and offered three quid pro quo items in exchange for its package proposal. Nevertheless, the Union's response was to declare further negotiations futile<sup>7</sup>.

In my estimation this record, not unlike the record that was before me in *City of Highland, S-MA-06-159* (2007), establishes that the course of bargaining has not led to an exhaustion of negotiations on this issue. Thus, I find that the Employer has met its burden of establishing a justification for a breakthrough.

However, that conclusion does not compel adoption of the Employer's final offer for several reasons. First, as many arbitrators, including myself, have concluded that interest arbitration is a conservative process and thus breakthroughs are generally avoided. Second, many arbitrators, again including myself, have ruled that interest arbitration is intended to replicate the result that the parties would or might have arrived at if negotiations had been successful.

Because the parties' bargaining history does not establish that negotiations have been exhausted I cannot divine what their agreement would or might have been if their negotiations had proceeded differently. Thus, I remand this issue to the parties<sup>8</sup>.

I am very mindful that remanding a single issue for further negotiations substantially narrows the range of discussion available to the parties. Nevertheless, both parties are represented by seasoned negotiators and, in many respects, a negotiation on step movement alone would be no different than, for example, a wage reopener which is, of course, common in collective bargaining.

#### AWARD

I find, based on the statutory factors applied as discussed above, as follows:

1. That the parties' tentative agreements are hereby adopted

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<sup>6</sup> I am not as sanguine as the Employer about the relative productivity of junior and senior employees for to conclude that the former are more productive ignores the productivity that is undoubtedly the result of better judgment and experience that an employee gains over time.

<sup>7</sup> In addition, the record reflects that the Employer continued to make off-the-record proposals to the Union, but to no avail.

<sup>8</sup> However, because I have found step movement a separate and distinct issue I decline the Employer's invitation to remand the other issues of wage increases and longevity.

2. That the Union's final offer on wages is adopted
3. That the Union's final offer on longevity is adopted
4. That the Employer's final offer on duty relief days is adopted
5. That the Employer's final offer on availability pay is adopted
6. That the issue of step movement is remanded to the parties.
7. That, as requested by the parties, I retain jurisdiction over the issue of Good Attendance Policy.

DATED:

*April 9, 2015*



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**Robert Perkovich, Arbitrator**